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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: Steven P. Hergott, et al.
SERIAL NO.: 10/659,650
TITLE: METHOD AND MEANS FOR STUFFING
NATURAL CASINGS WITH SAUSAGE
EMULSION
FILED: September 10, 2003
GROUP/A.U.: 3643
Confirmation No.: 1820
EXAMINER: Richard Thomas Price, Jr.

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This is a resubmitted appeal brief in response to the Notification of Non-Compliant Appeal Brief sent March 21, 2006. A representative of the Applicant has talked with the Examiner regarding this Brief, MPEP § 1205, and 37 CFR 41.37(c) and presents this brief. This is an appeal from the final rejection of claims 1, 5 and 6 dated October 19, 2005.

I. Real Party In Interest:

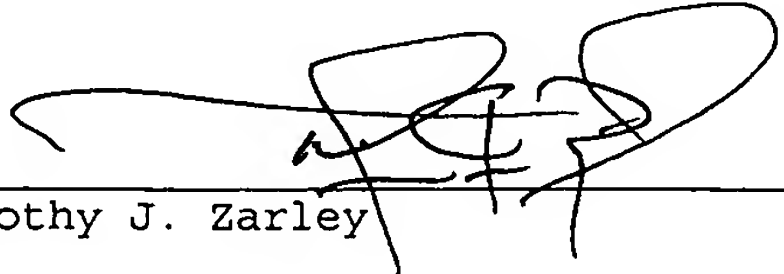
CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this document and the documents referred to as enclose therein are being deposited with the United States Postal Service as First Class mail addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 21st day of April 2006.

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Timothy J. Zarley

The real party in interest of the instant appeal is Townsend Engineering Company, an Iowa corporation, having offices at 2425 Hubbell Avenue, Des Moines, Iowa 50317.

II. Related Appeals and Interferences:

There are no related appeals or interferences.

III. Status of the Claims:

Presently, claims 1 and 5-6 are pending in this application and appear at Appendix A of this brief. Claims 1 and 5-6 are rejected and are identified as the claims being appealed.

IV. Status of Amendments:

After the final rejection an amendment after final was presented requesting reconsideration of the rejections however no changes to the claims were made. The amendment has been considered by the Examiner but was not persuasive.

V. Summary of Claimed Subject Matter:

Independent claim 1 requires a method of advancing a natural casing 26 along the length of a hollow meat stuffing tube 14. (Page 3, lines 19-24). The method includes placing a hollow natural casing 26 on the outside surface of a hollow stuffing tube 14 having meat emulsion discharge end 14A. (Col. 4, lines 3-7).

The next step requires placing a hollow conical shaped restrictor 30 on the stuffing tube 14 having a side wall extending from a smaller diameter end adjacent the discharge end 14A of the stuffing tube to a larger diameter end. (Page 3, line 25 - Page 4, line 2). The next step involves decreasing the diameter of the natural casing with the side

wall of the conical shaped restrictor 30 as the natural casing 26 is being slidably moved towards the discharge end 14A of the tube 14. (Page 4, lines 3-15).

A final step involves placing a twisting mechanism 16 in spaced relation to and located downstream from the hollow conical shaped restrictor 30. (Page 3, line 35 - Page 4, line 6).

The other independent claim 5 is for a machine for stuffing natural casings with emulsions that is used in association with the method of claim 1. Specifically the machine has a hollow meat stuffing tube 14, a follower 24 slidably mounted on the stuffing tube 14, a hollow conical shaped resistor 30 and a twisting mechanism 16. (See page 3, line 19 - page 4, line 2). Additionally added to the claims in claim 6 is a longitudinally movable shaft 28 that is parallel to the stuffing tube 14 and connected to the follower 24 and drives the follower 24 longitudinally about the stuffing tube 14, thereby pushing the natural casing 26 towards the discharge end 14A of the stuffing tube 14 as the casing 26 is filled with emulsion. (Page 3, lines 19-24).

VI. Grounds of Rejection to be Reviewed on Appeal:

The Examiner has rejected claims 1, 5 and 6 under 35 U.S.C. § 102(b) as being anticipated by Duroyon (U.S. Patent No. 4,437,209).

VII. Argument:

Rejection Under 35 U.S.C. § 102

Claims 1, 5 and 6 are pending in the present application. Claims 1, 5 and 6 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Duroyon (U.S. Pat.

No. 4,437,209). Applicant respectfully traverses the rejection.

Duroyon (U.S. Patent No. 4,437,209) teaches a stuffing machine including a turret 20 having a pair of stuffing horns 21 and 22 mounted thereon. (Col. 4, lines 58-60). The stuffing horn 21 is in the operating position in which the casing supply 27 thereon is stuffed with a food product from a food pump schematically illustrated at 31 to produce stuffed and clipped sausages 28 that are carried away by conveyor 29. (Col. 4, lines 63-68). Additionally the mechanism has a sizing ring 60 and a sealing ring 63 that is carried in a holder 65. (Col. 6, lines 57-58). The distance between the sizing ring 60 and the sealing ring 63 is adjusted by a mechanism 100 creating a desired hold back force to produce a product of desired stuffing size. (Col. 6, lines 61-64). Specifically the side walls of the carrier 65 are not used to contact the sausage casing nor do they provide a function. Additionally the outside diameter of carrier 65 does not taper as a conically shaped resistor would.

Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v.

Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Claim 1

Claim 1 in part requires "decreasing the diameter of the natural casing with the sidewall of the conical shaped restrictor as the natural casing is being slidably moved towards the discharge end of the tube". Duroyon does not teach this limitation and instead teaches a casing 70 that is interposed between a sizing ring 60 and a sealing ring 63 carried in a holder 65 creating a desired hold back force to produce a product the desired stuffed size. (Col. 6, lines 57-64). Thus, the sealing ring 63 is specifically used to determine size of the casing 70 and not the sidewall of a conically shaped restrictor. Therefore, as Duroyon does not teach each and every limitation of claim 1, the Applicant respectfully requests that the rejection be reversed.

A similar argument to that above was made in the argument of the previous response to an office action and the Examiner has asserted that the sizing ring 63 is an integral part of the hollow conical portion holder 65 and thus the inner surface of the elements 65, 63 and 64 when considered

broadly can constitute the sidewall of the hollow conical restrictor. (Office Action of October 19, 2005, page 3). Applicant disagrees with the Examiner's assertion. Specifically the sealing ring 63 and holder 65 are two different pieces wherein the sealing ring 63 is carried in the holder 65. (Col. 6, lines 57-59). As shown in both Figs. 4 and 5, the holder 65 has an opening therein that the ring 63 is disposed within. Thus the ring 63 cannot be considered part of the sidewall of 65 as the ring 63 is a separate and non-integral part of holder 65. Additionally even if the ring 63 was integral with the holder 65, the integral piece would be an L-shape having two separate surfaces, and the entire inner perimeter of the L could not be considered the same sidewall nor conical in shape. Thus Applicant believes that the holder 65 and ring 63 combination does not teach decreasing the diameter of the natural casing with the sidewall of the conical shaped restrictor and instead teaches decreasing the casing with a ring that provides a separate surface that is not the sidewall of the conical shaped restrictor. Therefore Applicant respectfully requests that the Board overturn the Examiner's rejection and allow claim 1.

Claims 5 and 6

Claim 5 requires in part "a hollow conical shaped restrictor on the stuffing tube having a side wall with an exterior extending from a smaller diameter end adjacent the discharge end of the stuffing tube to a larger diameter end to decrease the diameter of the natural casing". (Emphasis added). Duroyon does not teach this limitation and instead teaches a holder 65 with a flat exterior surface. The holder 65 additionally has a tapered interior surface that holds a sealing ring 63 that is used to create a desired hold back

force to produce a product of desired stuffing size. (Col. 6, lines 57-67). By having a claim limitation of a hollow conical shaped restrictor having a side wall with an exterior extending from a small diameter end to a large diameter end the claim specifically points out the shape of the restrictor and the idea that the restrictor is actually conically shaped. This is opposite to Duroyon that does not teach a side wall with an exterior that extends from a smaller diameter end to a larger diameter end and instead only teaches a tapering interior side wall that does not relate to the functioning of decreasing the diameter of a natural casing. Thus Duroyon does not teach a side wall with an exterior extending from a smaller diameter to a larger diameter and Applicant respectfully requests the Examiner's rejection be reversed and claim 5 to be allowed. Claim 6 depends on claim 5 and for at least this reason is also considered in allowable form and applicant respectfully requests reversal.

Our Client is now considered to be a Large Entity and a check in the amount of \$500 has been included with this appeal brief. All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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Attachment: Appendix

APPENDIX

VIII. Claims Appendix

Claim 1. (previously presented) A method of advancing a natural casing along the length of a hollow meat stuffing tube, comprising,
placing a hollow natural casing on the outside surface of a hollow stuffing tube having a meat emulsion discharge end,
placing a follower against an upstream end of the natural casing to slide the natural casing forwardly along the stuffing tube towards a discharge end,
placing a hollow conical shaped restrictor on the stuffing tube having a side wall extending from a smaller diameter end adjacent the discharge end of the stuffing tube to a larger diameter end,
decreasing the diameter of the natural casing with the side wall of the conical shaped restrictor as the natural casing is being slidably moved towards the discharge end of the tube, and
placing a twisting mechanism in spaced relation to and located downstream from the hollow conical shaped restrictor.

Claims 2.-4. (Canceled)

Claim 5. (previously presented) A machine for stuffing natural casings with emulsion, comprising,
a hollow meat stuffing tube on the machine having a first end and a discharge end for extruding emulsion into a natural casing on an outer surface of the stuffing tube,

a follower slidably mounted on the stuffing tube adjacent an end of the natural casing nearest the first end of the stuffing tube,
a hollow conical shaped restrictor on the stuffing tube having a side wall with an exterior extending from a smaller diameter end adjacent the discharge end of the stuffing tube to a larger diameter end to decrease the diameter of the natural casing, and
a twisting mechanism in spaced relation to and located downstream from the hollow conical shaped restrictor.

Claim 6. (previously presented) The machine of claim 5 further comprising, a longitudinally movable shaft that is parallel to the stuffing tube and connected to the follower and drives the follower longitudinally about the stuffing tube, thereby pushing the natural casing towards the discharge end of the stuffing tube as the casing is filled with emulsion.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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CONF. NO. : 1820
DOCKET NO.: P06667US0-169G

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ASSERTION OF LARGE ENTITY STATUS

I, Timothy J. Zarley, the Attorney of Record for the above captioned patent, hereby advises you that our client is now a Large Entity and Large Entity fees are now applicable on the above referenced U.S. Patent Application. Please update your records accordingly.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being sent via First Class to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 21st day of April, 2006.

Timothy J. Zarley